

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

United States of America

vs

George C. Wallace,
Albert J. Lingo,
C. W. Russell,
Joe Snellley,
Walter L. Allen,
Claude Sutton Prier, and
T. L. Payne
.....

Civil Action

No. 1976-N.

Before: Hon. Frank M. Johnson, Jr.,
Hon. Seybourn H. Lynne,
Hon. Daniel H. Thomas,
Hon. H. H. Groves, and
Hon. Clarence W. Allgood,
United States District Judges;

at: Montgomery, Alabama, September 24, 1963.

A p p e a r a n c e s:

For the United States: John Doar and
Ben Hardenan.

For the Defendants: John P. Kohn.

(The above-styled case coming on for hearing at
Montgomery, Alabama, September 24, 1963, before the above-constituted
Court, the following proceedings were had:)

JUDGE JOHNSON: Civil Action 1976-N, United States
against George C. Wallace, Albert J. Lingo, C. W. Russell, Joe
Snellley, Walter L. Allen, Claude Sutton Prier, T. L. Payne; here at

this time for a hearing on the Plaintiff's motion for a preliminary injunction. The Plaintiff ready?

MR. DOAR: Plaintiff is ready, your honor.

JUDGE JOHNSON: Defendants ready?

MR. KOHN: Defendants ready; some of the pleadings have to be settled, I think, before we go into the case.

JUDGE JOHNSON: All right. There is a motion to dismiss that was filed in this case on September 20. Motion has been considered by this empaneled Court; it is the unanimous opinion of the Court that the motion is due to be denied. It is therefore the order, judgment, and decree of the Court that the motion to dismiss that was filed herein on September 20, on behalf of the Defendants, be and the same is hereby denied. There is an objection to Judges Lynne, Thomas, Grooms, and Allgood sitting in this case, filed by the Defendants on September 20. That objection has been considered by the several Judges, and it is the unanimous opinion of the Court that that motion is due to be denied. It is therefore the order, judgment, and decree of the Court that the objection to Judges Lynne, Thomas, Grooms, and Allgood sitting in this case be and the same is hereby denied. Formal written orders will be entered and filed in the case --

MR. KOHN: Yes, sir.

JUDGE JOHNSON: -- in due course. I believe that settles the pleadings.

MR. KOHN: Yes, sir.

JUDGE JOHNSON: Gentlemen, before we start, let me make this inquiry of you: The case is being heard at this time upon the prayer of the United States for a preliminary injunction, and for preliminary relief; is there any reason why the case cannot be heard at this time upon the prayer in the United States' complaint for permanent relief? In other words, is there, or will there be -- you gentlemen know what your evidence is and what the facts are better than we; is there any reason why the Court cannot at this time take the case on the prayer for permanent relief as well as for preliminary relief?

MR. KOHN: Your honor, we would like to object to the Court considering the prayer for permanent injunction.

JUDGE JOHNSON: In the absence of a stipulation, it will not be considered on the prayer for permanent relief.

MR. KOHN: Yes, sir.

JUDGE JOHNSON: All right. Ask your witnesses to come around, gentlemen.

MR. DOAR: Will all the witnesses please come forward; all the witnesses who have been subpoenaed, please come forward.

JUDGE JOHNSON: Witnesses for both sides, please.

MR. KOHN: Stand up there.

MR. DOAR: Mr. Forsht.

THE CLERK: All witnesses, please raise your right hand.

(Witnesses sworn by the Clerk)

JUDGE JOHNSON: You want the rule invoked?

MR. KOHN: We would like the rule.

JUDGE JOHNSON: All right.

MARSHAL: All --

JUDGE JOHNSON: All witnesses, except those named as parties, will be excluded from the court room; go to the witness room designated by the Marshal, if you will.

MARSHAL: Come right around here.

(Mr. Doar had whispered conference with Mr. Kohn at counsel table)

MR. DOAR: Mr. Pruitt.

JUDGE JOHNSON: All right, call your first witness.

MR. DOAR: I would like to call Mr. Pruitt, your honor, C. A. Pruitt.

JUDGE JOHNSON: All right.

MR. DOAR: Your honors, before proceeding with the first witness, there have been a number of Exhibits which have been agreed to by the counsel for each side to be offered into evidence.

JUDGE JOHNSON: Those are the Exhibits you gentlemen discussed with me yesterday, I take it?

MR. KOHN: Yes, your honor.

MR. DOAR: Yes, sir.

JUDGE JOHNSON: (Nodded to indicate affirmative reply)

MR. DOAR: And would it be convenient and the pleasure of the Court to offer those now?

JUDGE JOHNSON: Yes, let them be offered.

MR. KOHN: There is one Exhibit I think I should reiterate an objection to, and that is the certificate from the Fifth Circuit appointing the respective Judges to serve in this District; I think if that is going to be offered as an Exhibit I renew my objection to that on the grounds that I assigned in my original objection to the panel; doing that just to reserve any rights, if I have any, in that respect.

JUDGE JOHNSON: All right, that Exhibit will be admitted, along with the others.

MR. DOAR: Your honors, Exhibits 1-A through 3-C consist of orders of the Honorable Courts for the Northern District of Alabama, the Southern District of Alabama, and the Middle District of Alabama, in the civil actions dealing with the desegregation of schools in Birmingham, Mobile, and Tuskegee, Alabama.

JUDGE JOHNSON: All right.

THE CLERK: They are marked as Plaintiff's Exhibit 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3-A, 3-B, and 3-C.

MR. DOAR: As Exhibit 4, your honors, I would like to have marked Executive Order Number Nine of the Governor of Alabama.

THE CLERK: Plaintiff's Exhibit number 4 for identification.

JUDGE JOHNSON: Any objection, Mr. Kohn?

MR. KOHN: No objections to any of the Governor's Executive Orders.

JUDGE JOHNSON: It will be admitted.

MR. DOAR: I would like to hand to the Clerk for the convenience of the Court five extra copies of -- of Exhibit number 4.

JUDGE JOHNSON: All right.

MR. DOAR: Exhibit number 5, your honors, is Executive Order Number Ten.

THE CLERK: Plaintiff's Exhibit number 5.

JUDGE JOHNSON: It will be admitted.

MR. DOAR: And five extra copies. And the second Executive Order marked Number Ten.

THE CLERK: Plaintiff's Exhibit number 6.

JUDGE JOHNSON: As I understand it, each of these Executive Orders are admitted without objection?

MR. KOHN: Yes, your honor.

JUDGE JOHNSON: All right.

MR. DOAR: The last one was marked 6?

THE CLERK: Yes, sir.

MR. DOAR: As Exhibit number 7, I would like to offer Executive Order Number Eleven.

THE CLERK: Plaintiff's Exhibit number 7.

MR. DOAR: As Exhibit number 8, Executive Order Number Twelve.

THE CLERK: Plaintiff's Exhibit number 8.

MR. DOAR: As Exhibit number 9, Executive Order Number Thirteen.

THE CLERK: Plaintiff's Exhibit number 9.

MR. DOAR: The -- your honors, the parties have also agreed that the affidavits which were attached to the complaint of the Government in this case may be considered by the Court on this motion for a preliminary injunction, and that the deposition of John Doar, together with a statement attached thereto, may be considered by this Court on the motion for preliminary injunction.

MR. KOHN: That is correct, your honor; we have stipulated to that effect.

JUDGE JOHNSON: All right, they will be considered by the Court pursuant to your agreement.

MR. DOAR: I am ready now to proceed with the first witness.

JUDGE JOHNSON: All right.

CLYDE A. PRUITT, witness for the United States, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. DOAR:

Q Would you tell the Court your full name, please?

A Clyde A. Pruitt.

Q Mr. Pruitt, will you speak up in a loud, clear voice, so everyone in the court room can hear you. Where do you live?

A Tuskegee, Alabama.

Q How old are you?

A Sixty-five.

Q What is your occupation?

A Superintendent of Education, Macon County.

Q How long have you been Superintendent of Education of Macon County?

A Since July 1, 1954.

Q Could you tell the Court just briefly the composition of the school system of -- which you supervise in Macon County?

A We have twenty schools; population -- school population of approximately six thousand, five hundred students; operate sixty-five school busses; have two hundred seventeen teachers in the system.

Q Is one of the schools, Mr. Pruitt, that you supervise known as Tuskegee High School?

A It is; that's right.

Q And is that -- could you tell me whether or not that school accepts students from the first through the twelfth grade?

A It does.

Q Mr. Pruitt, were you and the Board of Education for Macon County ordered by the United States District Court for the Middle District of Alabama to commence accepting transfers of --

applications for transfers from Negro students within Macon County for the fall semester beginning in September of 1963?

A That is right, sir.

Q Can you tell whether or not a writ of injunction and order of this Court was served upon you in the latter part of August?

A It was.

Q Excuse me. Mr. Pruitt, subsequent to the injunction of this Court being served upon you, what if anything did you and the Board of Education do?

A We immediately began to accept applications from parents of children who wished to make application to transfer their children to Tuskegee Public School. We received forty-eight applications and processed them, and by the end of August, thirteen of the forty-eight students were ordered admitted to Tuskegee Public School.

Q Now, were these students of the Negro race?

A They were.

Q When was school scheduled to open for the fall semester, Mr. Pruitt?

A On September -- September 2.

Q Prior to the opening of the school, did you make any request to the Governor of Alabama to postpone the opening of the school?

A No, I did not.

Q On the morning that school was scheduled to open, in your own words will you tell the Court what happened at Tuskegee High

School?

- A The -- on the morning of September 2, about approximately six o'clock in the morning, I was called to the door by a knock on my front door, and was served with an order, I believe it is Order Number Nine, from the Governor asking or requesting or ordering the school be -- the opening of school be delayed for one week. So naturally I went over immediately to the school, Tuskegee Public School, and found that there were quite a few State Troopers on hand, and as the school busses came in, they were turned back, and as the teachers and students came to school, they were turned back. There was no --
- Q Can you tell -- can you tell me whether or not officers of the Alabama State Troopers remained around the school all of the week of September 2 during school hours?
- A The Troopers did remain for the entire week.
- Q Now, did -- did the Tuskegee High School remain open during that week, Mr. Pruitt?
- A It was technically open; there were no teachers or students admitted to the campus, or to the building, but it was -- it was open.
- Q What prevented the teachers and students from entering the Tuskegee High School that week?
- A Well, they was turned back by the State Troopers.
- Q On the 2nd of September, Mr. Pruitt, prior to the -- prior to eight o'clock in the morning, did you observe any acts of

violence around the Tuskegee High School?

A No, I didn't see any acts of violence. I --

Q Did you see any crowds around the Tuskegee High School, crowds of people?

A Well, the -- I would say that there was a crowd of news men and -- but -- and some -- no unusual number; I would say there were quite a few parents who brought their children for the opening day of school, of course, but --

Q When you received Executive Order Number Nine at six o'clock on September 2, Mr. Pruitt, can you tell me whether or not that was the first time you knew that the Governor of the State had issued that Executive Order?

A That's right; that was the first that I knew that he would issue -- .

Q Now, do you recall the 9th of September, 1963, at Tuskegee, Alabama?

A I do.

Q And could you tell the Court in your own words what took place on that morning with respect to the opening and operation of the Tuskegee High School?

A The 9th of September was the second Monday, after the opening of school, and the -- I was served with Order Number Eleven, I believe, on that date.

Q Do you recall when you were served?

A About six o'clock in the morning, approximately.

Q And what happened thereafter at the Tuskegee High School?

A Well, they -- no one was -- I believe on that date the children were allowed to enter the school, and the teachers, but the Negro children were turned back.

Q Were there -- were there at the time that school opened State Troopers of the State of Alabama around surrounding the Tuskegee High School?

A That's right.

Q And could you just briefly tell the Court what happened with respect to the Negro children when they came to the school?

A Well, the Negro children were carried on Macon County school bus to the school from the Board of Education office and --

Q Was that under your direction?

A That was under my direction; I had spent about forty minutes with them in orientation period, I wanted to talk with them before they were carried over to the school. At the same time it gave the principal of the school an opportunity to talk to the student body, which was just assembled for the first time of the year, of this school year. So they were carried over to the high school where they were stopped; they were not allowed to get off the school bus, and they were -- the order was -- I was told that by order of the Governor they would not be admitted, and they were carried back to their -- to my office, where they got in the cars, parents took them home.

Q Now, you indicate that you were told that they would not be

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admitted; do you know who told you this?

A I believe it was Captain Prier, if I remember.

Q Is Captain Prier -- can you tell me whether or not he is an officer of the Alabama State Highway Patrol, or the Alabama State Troopers?

A I -- I think that he is; I --

Q Was he in the uniform of the Alabama State Troopers that day?

A Yes, he was.

Q Now, did you observe on the 9th of September any acts of violence around the school?

A No, I didn't.

Q Did you observe any crowds of people around the school on the 9th of September?

A The only -- the people were kept back off the school ground on the streets adjacent to the school, but there were no unusual number; I didn't notice any -- any large crowd.

Q Mr. Pruitt, could you tell the Court what happened on the 10th of September? At the --

A On the 10th of September --

Q Sometime prior to opening the school? Excuse me.

A On the 10th the -- I was up early, and about -- oh, approximately six o'clock, or quarter to six, somewhere in about that time, I -- since I live only one -- well, I live in a block adjacent to the school, I naturally looked out to see what the situation was at that time, and I noticed some National Guardsmen, or

rather men in military uniform; I went over to the school and found there that it was -- that the National Guard was coming in, just approaching the school ground, some with their officers were there.

Q Did you observe whether or not these National Guard soldiers took positions around the doors and the -- and the grounds of the school?

A They were standing one or two on the various posts around; I talked to the commanding officer for a few minutes and went to my office. I didn't -- I was there only for a few minutes.

Q Do you know whether or not these Alabama National Guardsmen left the campus of Tuskegee High School prior to the opening of school that day?

A They did; the commanding officer came by my office and informed me that they would not be on the ground, they had gone to the armory, which was some distance away, National Guard Armory.

Q Did -- did school open that day, Mr. Pruitt?

A It did.

Q And did the Negro children enter the school that day?

A They were admitted that day; yes, sir.

Q Has school operated since the 10th of September?

A Yes, school has operated each day since then; school day.

Q On the 10th of September, Mr. Pruitt, were there any acts of violence around the school when the Negro children entered the school?

A No, I -- I know of no acts of violence; there was a lot of oratory, lot of groups talking, but I saw -- heard of no acts of violence.

MR. DOAR: Thank you.

JUDGE JOHNSON: Cross examination; Mr. Kohn.

CROSS EXAMINATION:

BY MR. KOHN:

Q Mr. Pruitt, did I understand you to say that you been in your present position since 1954?

A That's right, sir.

Q Is that an elected position or appointed position?

A It is appointive, sir.

Q By whom, sir?

A By the County Board of Education, Macon County.

Q Is the County Board of Education made up of -- of how many people?

A Five, elected by the County, citizens of --

Q At large?

A That's right.

Q By the precincts or districts, or at large?

A At large.

Q At large?

A At large.

Q Would you say in your capacity as School Superintendent that you have had an occasion to go quite a bit around the County

and come in contact with the rank and files of the people of that County?

A I do.

Q Would you say that you are in a position to more or less keep up with the public pulse and the public feeling on the question of tension that might exist in that school at the time you talked about, September 10, 1963?

A To a certain degree; I talked with the patrons of the school, and I think that I had an opportunity and have an opportunity to know their feelings on -- .

Q Have you an opinion -- I am not asking you what your opinion is yet; have you an opinion on whether or not there was any unusual tenseness in existence in the immediate vicinity of that high school on October the 10th, 1963, and immediately prior thereto?

A There was considerable concern, but I was not aware of any unusual tenseness on the part of people.

Q Now, Mr. Pruitt, I believe you testified that there was a lot of -- there were groups of people, and you heard talking and oratory; what -- what do you base that oratory on, if not tenseness?

A Difference of opinion on the part of people; some -- some groups felt that, for instance, that the school should be closed, some felt that it should be open, and just as you find on any subject, difference of opinion, but -- .

- Q Well, then, that was not a usual condition; I believe you said nothing unusual happened?
- A It was not a normal situation.
- Q Not a normal condition?
- A No, it wasn't a normal situation.
- Q Now, Mr. Pruitt, at the present time, not speaking legally, but factually, that is a segregated school, isn't it?
- A At the present time?
- Q Yes, sir?
- A The high school is.
- Q Yes, sir.
- A Yes, sir; is segregated at the present time.
- Q Only occupied by students of the Negro race?
- A That's right.
- Q Mr. Pruitt, since -- I believe in your testimony you said something about these troopers being around the school, or the soldiers being around the school early that morning, and I believe you said the 9th of September; now, isn't it factual that it was the 10th when the Guardsmen actually arrived in Tuskegee, or could I be wrong, it could have come that night?
- A It was the 10th when I noticed them; I think I so testified.
- Q Now, Mr. Pruitt, since September 10, 1963, and since these Negro students have been in this high school that you have just identified, have you any knowledge or evidence that the State Alabama, the Governor of this State, or the Highway Patrol, or

the Department of Public Safety of the State of Alabama, or the Alabama National Guard has interfered with or tried to remove any students from that school?

A No, I do not.

Q Sir?

A I do not have any evidence that that has happened.

Q Isn't it to your knowledge that it's the policy, the announced policy of the Governor of this State, that after the placing or putting on the entrance, any way you want to term it, of these students in a -- that particular school as a result of the federalization of the National Guard, that the State, the Governor, and the Highway Patrol have made no effort or no announced policy is to further interfere with that school?

A That's right.

Q That is your knowledge, isn't it?

A Yes.

MR. KOHN: Thank you, sir.

JUDGE JOHNSON: Redirect; Mr. Doar.

MR. DOAR: No questions.

JUDGE JOHNSON: Step down, Mr. Pruitt.

MR. DOAR: Mr. Kohn, can Mr. Pruitt be excused?

MR. KOHN: Yes, sir.

MR. DOAR: He has another appointment.

MR. KOHN: Yes, Mr. Pruitt; thank you, sir.

MR. DOAR: Is that agreeable with the Court?

JUDGE JOHNSON: He can be excused by agreement of counsel.

MR. DOAR: Thank you, your honor. Mr. Taylor.

RAYMOND BRUCE TAYLOR, witness for the United States, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. DOAR:

Q Would you tell the Court your full name, please?

A Raymond Bruce Taylor.

Q Mr. Taylor, where do you live?

A Mobile.

Q How old are you?

A Forty-seven.

Q What is your occupation?

A Principal of Murphy High School.

Q How long have you been Principal of Murphy High School?

A This is my first year.

Q Mr. Taylor, could you tell the Court just briefly -- or strike that. Could you give the Court briefly a general description of Murphy High School in Mobile?

A It is a two-story, Spanish Colonial type building, I guess you would call it; we have eleven buildings on our campus; the main building, two floors, two stories; the other buildings are connected by covered passageways.

- Q How many students normally attend Murphy High School?
- A Approximately three thousand.
- Q Mr. Taylor, who is your immediate supervisor in the school system?
- A Dr. Cranford Burns, Superintendent of Education.
- Q And who manages the school system in the City of Mobile; is there a School Board?
- A School Board, Board of School Commissioners.
- Q Now, do you know whether or not in August of this year the United States District Court for the Southern District of Alabama entered an order directing the School Board of Mobile to formulate and submit a plan for the desegregation of schools in the City of Mobile?
- A I understood that; I am not sure of the date; I understood that was the order.
- Q Now, subsequent to the -- to the -- or in the latter part of August, can you tell me whether or not two Negro students were accepted for admission to the Murphy High School in Mobile?
- A Yes, sir.
- Q Do you know whether or not they were ever -- this was the first two Negro students to enter the Murphy High School?
- A To my knowledge; yes, sir.
- Q When was school scheduled to open?
- A September -- September 3.
- Q Did school open on that day?

A We had the students to register that day.

Q And did all students that were making application or that -- did all students who intended to go to the Murphy High School register that day?

A We had late registrations.

Q But did -- can you tell me whether or not the two Negro students registered for Murphy High School on that day?

A I think my -- if that was Wednesday, September 3, it was Wednesday.

Q Yes.

A That was the date; yes, sir.

Q Now, were there any -- did you observe any acts of violence around the school on September 3?

A No, sir.

Q Was there any crowds of people around the school on September 3?

A A few; not a large number.

Q Now, did the -- did school -- was school open on September 4 and 5th; that would be Thursday and Friday of the week of September 2?

A Yes, sir.

Q And did the Negro students attend school on those days?

A No, sir.

Q On Monday, September 9, were you present at the Murphy High School?

A Yes, sir.

Q Would you tell the Court in your own words what you observed on that morning? Prior -- shortly before school opened?

A The two Negro students made an attempt, or drove into the horseshoe in front of the school building, and got out of their conveyance, and started to enter the school building, admission building; they were stopped by State Troopers.

Q Did you observe that?

A From a distance.

Q Do you know how many State Troopers were surrounding the building?

A I do not.

Q Were there -- was there a number of them?

A There were a number; I do not know how many.

Q Did the State Troopers make any attempt to stop any white students on that day?

A None that I know of.

Q Were you served with any Executive Order of the Governor on September 9, the Governor of the State of Alabama?

A No, sir.

Q Were you present at Murphy High School on September 10?

A Yes, sir.

Q And what happened on that date -- I will strike that. Did you observe any Alabama National Guard troops at the school on the morning of September 10?

A No, sir.

Q Did school open regular -- on a regular basis on September 10?

A Yes, sir.

Q Did white children attend the school on that day?

A Yes, sir.

Q Did the two Negro students attend on that day?

A Yes, sir.

Q Has school continued to operate -- has the Murphy High School continued to operate since that time?

A Yes, sir.

Q Now, on either September 9 or 10th, at the Murphy High School, did you observe any acts of violence around the school?

A 9th or 10th?

Q Yes?

A No, sir.

Q Were there any crowds of people around the school on either of those days?

A We had some on the outside of the campus, perimeter of the campus.

Q Has -- has the Murphy High School continued to operate since the 10th of September, on a regular basis?

A Yes, sir; we have.

MR. DOAR: Thank you.

CROSS EXAMINATION:

BY MR. KOHN:

Q I believe you said your name was Mr. Robert Bruce Taylor?

A Raymond Bruce.

Q Raymond Bruce Taylor?

A Yes, sir.

Q Mr. Taylor, I believe you stated you had been Principal of that Murphy High School for one year?

A This is my first year, sir.

Q Your first year?

A Yes, sir.

Q Were you connected with the school prior to this first year?

A Yes, sir.

Q In what capacity?

A I was Assistant Principal, in charge of business, last year.

Q Now, on September 3, 1963, and September 9, and 10th, 1963, or either of these dates, were you present when the students came into the school, or attempted to come into the school?

A I was; I was on the campus in the building.

Q In the building; were you nervous?

A Not unduly so.

Q Were you apprehensive?

A Maybe to a small degree.

Q Isn't it a fact that your small degree of apprehensiveness was due to the obvious tension that existed in that vicinity, and especially around that school on those occasions that I have enumerated?

A I -- I can't answer that; I don't --

Q Well, then, what is -- was the basis of your apprehensiveness?

A Being principal of such a large school, my first job as Principal brought about most of my apprehension.

Q And that was the sole basis of your nervousness, or your tenseness? Now, I submit it to you, Mr. Taylor, as a father and ask you to affirm or deny that there was tension in Mobile on September 9 and immediately prior thereto, and on September 3 and on September 10, 1962, resulting from this proposed school integration of Murphy High School in Mobile County, Mobile, Alabama?

A Yes, sir; there was tension.

Q Mr. Taylor, since these Negro schools -- students have entered Murphy High School along with the white students, or another way of putting the question to you, it might simplify it, is the integration of Murphy High School in Mobile, Alabama, has there been any attempted interference, or interference, or obstacles placed in the path, or objections resulting in any physical activity on the part of any representative of the State of Alabama, from the Governor right down to the Highway Patrol; no one connected with the State has interfered with these students since they finally got into the school; is that correct, sir?

A So far as I know.

Q So far as you know; are you familiar with the announced policy of the Governor of this State that once integration takes place

at a particular school, and your Murphy School, that he bows to the might of the Federal Government, and he ceases as to his activity as to that particular school; you know that is the announced policy of the Governor, don't you?

A I couldn't say that I do definitely; I have not --

Q Well, have you any information that anyone connected with any of the Defendants in this case, and I will enumerate you some of them, Mr. Lingo in the Public Safety Department of the State of Alabama, and the Governor of Alabama, or for that matter the National Guard, have any of these people, anybody purporting to represent the State in any capacity, appeared at your school or done anything to disturb the peace or to interfere with these students going about their regular orderly duties as pupils in this school?

A None that I know of.

MR. KOHN: Thank you, sir.

JUDGE JOHNSON: Redirect.

MR. DOAR: No questions.

JUDGE JOHNSON: You want to excuse this witness, also, gentlemen?

MR. KOHN: Excuse him; yes, sir.

MR. DOAR: Thank you very much.

MR. KOHN: Thank you, Mr. Taylor.

MR. DOAR: Mr. Wright.

JUDGE JOHNSON: Mr. Wright.

MR. DOAR: Mr. Wright.

THEO R. WRIGHT, witness for the United States, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. DOAR:

Q Will you tell the Court your full name, please?

A Theo, T-H-E-O, initial R., W-R-I-G-H-T, Wright.

Q Where do you live, Mr. Wright?

A 1212 Elm, E-L-M, Elm Street, Southwest, Birmingham.

Q What is your occupation, sir?

A Superintendent of Schools, Birmingham.

Q How long --

A Birmingham, Alabama.

Q Excuse me; how long have you been Superintendent of Schools?

A Since July 1, 1959.

Q Will you tell me whether or not you know whether the Birmingham school system was ordered by the United States District Court for the Northern District of Alabama to submit -- submit a plan for the desegregation of its schools commencing in September, 1963?

A Yes.

Q Subsequent to the submission of that plan, Mr. Wright, did -- did the School Board of Birmingham receive applications from Negro students to transfer to what had previously been white

schools in Birmingham?

A Subsequent to the submission of the plan, we allowed them to file them for one week up until the 26th; the plan was submitted the 19th of August.

Q And were applications for transfer submitted during that week?

A Yes.

Q Were any applications for transfer accepted, by the Board?

A I cannot recall whether they accepted applications were submitted during that week or before that week.

Q But at any rate were certain applications of Negroes accepted for transfer to what had previously been white schools?

A Yes.

Q Could you just for the record briefly indicate to the Court the number of those students and the schools to which they were then assigned?

A There was one assigned to Ramsey High School, there was -- there were two assigned to West End High School, two were assigned to Graymont School.

Q Were you present at any one of those schools on the morning of September 9, 1963?

A No, sir.

Q Were you served with a copy of Executive Order Number Ten of the Governor of the State of Alabama?

A No, sir.

Q Would you tell the Court just who are your superiors in the

school system of the City of Birmingham?

A My superiors are only the Board of Education members.

Q How many members are there on the Board?

A Regularly there are five; there has been a vacancy on the Board for about three or four months, which they have unable been unable to get anyone to accept, and so we have worked with either three or four during the last four or five months.

Q Since September 10, 1963, have the three high schools which you referred to as having had assigned to them Negro pupils, have they been operating?

A Yes, sir.

Q And do you know whether or not the Negro pupils, since the 10th of September, have been attending classes at those schools -- at those schools?

A There have been no absences reported by any of them to me by the principals.

MR. DOAR: Thank you.

CROSS EXAMINATION:

BY MR. KOHN:

Q But, Mr. Wright, there have been some white absences, have there not been, sir?

A Yes, sir; there have been a great many white absences.

Q Mr. Wright, as Superintendent of Schools of Jefferson County, is that an elected position or appointed?

A It is an appointive position; I am appointed by the Board.

- Q And is the School Board elected or appointed by some higher authority?
- A The Board for many years was appointed by the City Commission, and since the form of government has changed it is appointed by the City Council.
- Q Then the present School Board is a direct result of the appointment of the new City Council; is that correct, sir?
- A No, sir; the Board rotates in membership each year on April 1, a vacancy occurs, and the Council can reelect or put in a new person in that vacancy; they rotate one off each year and one on each year, unless they want them continued. Three of the present members were appointed by the City Commission, one was appointed by the City Council, the newest member.
- Q Thank you, sir. Did I understand you to say that there is a vacancy on that School Board as of now?
- A Oh, yes, sir; there has been a vacancy about four months or more.
- Q As a matter of fact, that position is a hot spot right now in Jefferson County, isn't it?
- A Yes, sir; I keep after the Council, we try to get someone to serve on the Board, and they keep telling me they will get -- unable to get anyone to serve on -- in that place.
- Q Mr. Wright, in your position as Superintendent of Schools, do you come in contact with what I would call every class and echelon, more or less, of the population of Jefferson County in Birmingham?

A Yes, sir; without question.

Q How long have you lived in Jefferson County, sir?

A I can't remember, when I was -- sixty-one years.

Q And you have been connected with this school as Superintendent for how long?

A As Superintendent, five years; I am in my forty-seventh year of service.

Q And were you a principal or a teacher before that, sir?

A I was a high school teacher, then an elementary school principal, and from '42 to '59, seventeen years, I was Assistant Superintendent, for '59 I became Superintendent.

Q Where were you born, sir?

A High Springs, Florida.

Q Do you think, based on your observation and conversation and listening and looking and general activity that you are qualified to have an opinion as to the general condition of tenseness if any exists in Jefferson County on September 9, September 10, and immediately prior thereto, 1963?

A Yes, sir; I think I am qualified to give an opinion.

Q What is your opinion, sir?

A My opinion is that it was a great condition of tensity and friction and uncertainty, based on the number of calls I received, many of them anonymous, most of them anonymous.

Q As a matter of fact, sir, is it factual that your house has been and perhaps now is under guard?

A Yes, sir.

Q By State Troopers, among others?

A I don't know if any State Troopers are there now; for a few nights I did see a State Trooper car cruising around the park.

Q Would you say, Mr. Wright, Superintendent Wright, that one of the contributing factors to this uneasiness and this tension is the -- was the announced or proposed integration of these schools in Birmingham?

A Why, yes, sir; of course.

Q Would you say that is a primary cause of the uneasiness?

A Why, yes, sir.

Q Since September 10, 1963, or whichever is the correct date that these Negro students were placed into these three schools under you, has anyone connected with the State of Alabama interfered with these students?

A No, sir; not -- not in any way; I haven't talked with anyone connected with the State of Alabama since then.

Q Have you seen or heard of anybody connected with the Motor Patrol or the Governor's office, or anybody else, trying to block these students in -- since they finally got in by federalization of the Guard?

A Not since that date; no, sir.

Q Isn't the announced fact to your knowledge that the policy of the Governor of this State has been, as to these three schools, since they were -- these students were placed there by the

federalized Guard, that he's announced that he bows to that federal authority as to those particular schools?

A I talked with the Governor about a week previous opening of schools, and he asked me if I thought there was any possibility of violence, and I told him from a number of calls that I had had I thought there might be a possibility. He said, well, above all he wanted to prevent any violence occurring at the schools.

Q And do you believe that Governor Wallace has lived up to that promise to try to prevent violence?

A Without doubt; yes, sir.

Q And do you believe at the present time, or know, that the State Troopers, a Department of the Public Safety Department of the State of Alabama, all under the direct direction of the Governor, are right this minute in Birmingham trying to preserve peace and order?

A Yes, sir; we are building a new administration building, and our offices at present are on the 10th floor of the City Hall, and I have to pass a great number of them every morning as I go to work.

Q Are you glad to see them there, sir?

A Yes, sir; very glad.

Q Do you think you know the material purpose they are there?

A Yes, sir.

Q To preserve peace and order?

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A Yes, sir.

Q To preserve peace and order?

A Yes, sir.

MR. KOHN: Thank you, sir.

JUDGE JOHNSON: Redirect.

MR. DOAR: No.

JUDGE JOHNSON: You want to excuse this witness, gentlemen?

MR. KOHN: Yes, sir.

MR. DOAR: Yes, sir. Donald Forsht. Now, this man -- excuse me; Donald Forsht.

DONALD D. FORSHT, witness for the United States, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. DOAR:

Q Will you tell the Court your full name, please?

A Donald D. Forsht.

Q Where do you live?

A Miami, Florida.

Q What is your occupation?

A Deputy U. S. Marshal.

Q How long have you been a Deputy U. S. Marshal?

A Approximately eight years.

Q How old are you?

A Thirty-six.

Q Were you on duty as a Deputy U. S. Marshal for the Middle District

of Alabama on the afternoon of September 9, 1963?

A I was.

Q And were you sworn in as a Deputy Marshal for the Middle District on that day?

A I was.

Q What assignment did you receive as a United States Marshal, Deputy Marshal, on that afternoon?

A I received process, to endeavor to serve a summons and complaint and various other process on Mr. George Wallace.

Q And do you recall when you received that summons and complaint for service?

A On September 9.

Q Do you recall the time of the day?

A Approximately six thirty, p.m.

Q And what did you do?

A I proceeded to the Governor's Mansion on Perry Street, and when I arrived there, I was advised that the Governor was not home, possibly I could reach him at the Capitol at his office. I then proceeded there, and when I arrived, I was stopped at the north entrance to the Governor's office by a plainclothes man who identified himself as Trooper Dothan of the Alabama Highway Patrol. I identified myself to him, that I had United States District Court papers for the Governor, and I would like to see him. He told me to wait outside, I did, and he went into the Governor's office. About thirty minutes passed. I

then talked to a Mr. Chandler, who was the Capitol Police on duty there; I advised him who I was, what I had done with Mr. -- with the Trooper, and would he go in and see what happened. He -- he left and went in. Approximately thirty minutes later he returned and said Dothan would be out shortly to talk to me. I waited. It was about eight o'clock; he had not returned, so I approached the Governor's office, myself, knocked on the door, the door was opened. A Trooper was standing there. I identified myself as a Deputy U. S. Marshal; I advised him I would like to see the Governor, that I had process for him. He said, "Would you please wait?" and closed the door again. Shortly he returned and said, "The Governor is not home, is not in." I then asked for Earl Morgan, the Executive Secretary. He advised me Mr. Morgan was not available. I then -- he then closed the door. I waited about thirty minutes again, and then I knocked on the door again and advised him that I knew the Governor was in there, and all I wanted to know, would he accept the process, could I have an answer, yes or no. The door closed, and I never did receive the answer. About ten o'clock about twenty-five Highway Patrolmen arrived on the scene; they went inside the Governor's office. I then again asked if I could see either the Executive Secretary or the Governor, that I had process, I was there on official business, and would he accept. Again I got no answer, and the door was closed in my face. About that time I decided maybe the Governor

would leave then with the Highway Patrol, so I called for assistance, and we had several Deputies to cover the front of the Capitol in case he went out the front door, two in the back in case he came out the back, to serve him in either direction that he may come.

Q Did each of these Deputies have a duplicate of the process that you were to serve?

A They did; yes, sir.

Q How many Deputies were there in all at that time?

A There was six, including myself.

Q When you first went to the Capitol, how many Deputies were there?

A Two; myself and Deputy Noe.

Q Deputy Noe?

A N-O-E, Noe.

Q Thank you; please continue?

A I then -- about eleven o'clock the newspapers and photographers all set their cameras up on the front steps of the Capitol. I advised Noe to stay at the north entrance, and I would see what was going on around the front. As I went around, I noticed the Governor looking out his office window, and I recognized him as Governor Wallace. I then proceeded to the front, and I talked to a Trooper who was there and asked him again, "I saw the Governor in his office, will you please advise him that I am still here and I have a process, will he accept or won't

he accept, all I want is an answer." He ignored me and just walked away. About that time a gentleman came out on the steps, and a -- in the press conference advised that the Capitol was sieged by the U. S. Marshals, and that the National Guard was being called out. Shortly there the National Guard was there on the front steps of the Capitol.

Q About how many, if you know?

A I would estimate fifteen. A colonel then of the National Guard approached me and asked me to leave; advised him I was a Deputy U. S. Marshal on official business, I was there to see the Governor, and as soon as I got word to leave I would leave. I then sent word back to the U. S. Attorney's office requesting what they wished me to do, and I was advised then to take the detail and leave. I asked the colonel to accompany me around the Capitol to see that the men that were on the detail be relieved; they had already left. I then proceeded down and left, myself.

Q Did you make service on the Governor at any time that night?

A That night; no, sir.

Q Did you -- did you make service on the following day?

A The following day I returned to the Capitol, and I was admitted to the Governor's office, I was admitted to Mr. Morgan's office, he is the Executive Secretary, he stated that he would accept service for the Governor, but the Governor would not see me.

Q And about what time was that?

A Around ten o'clock in the morning.

Q Did you leave the papers with --

A I left the papers with Earl Morgan, the Executive Secretary.

MR. DOAR: Thank you.

CROSS EXAMINATION:

BY MR. KOHN:

Q Now, sir, I have a name that is rather difficult to pronounce and I didn't get your last name.

A Forsht.

Q Would you spell it?

A F-O-R-S-H-T.

Q Did I understand you correctly to say that you were imported here from Miami for this specific assignment?

A No, I was on special detail here to assist in the Tuskegee school --

Q Situation?

A (Nodded to indicate affirmative reply)

Q What time did you arrive -- what date did you arrive in Montgomery, sir?

A I arrived in Montgomery on the 9th.

Q On the 9th?

A The same date; yes, sir.

Q When were you sworn in as a Deputy Marshal of this District?

A Previous to that, while I was on detail here for the Tuskegee incident.

Q Now, I show you a -- excuse me.

(Mr. Kohn showed paper to Mr. Doar and had whispered conference with Mr. Doar at counsel table)

Q I will ask you to look at this what I call a format on a process out of the United States District Court for the Middle District of Alabama, Civil Action file number 1976-N, and ask -- ask you to look up in the right hand corner and see if you see any kind of a seal?

A I do; yes, sir.

Q Can you identify that, please, sir?

A That is a U. S. Marshal's seal, received on September 10.

Q September 10, 1963?

A Yes, sir.

Q Then you got your copy of this paper before that; is that right?

A I did, sir.

Q You got your copy of this paper sometime between five thirty and six that night, didn't you, sir?

A Around six thirty; yes, sir.

Q Six thirty?

A (Nodded to indicate affirmative reply)

Q Are you familiar with the normal office hours kept by the Capitol in Montgomery, Alabama?

A I am not familiar with them; I imagine they are normal routine hours; yes, sir.

Q What would you imagine they are, like the Government?

A I imagine so; yes, sir.

Q What is that?

A Between eight and five.

Q Eight and five; then it is factual that your visit to the Capitol was after normal routine hours --

A Yes, sir.

Q -- is that correct, sir?

A Yes, sir.

Q And I believe you said that when you were -- approached certain people in the Governor's office, that -- don't you mean that -- that is the office that you can look through a glass door, that is an outer office of the Governor's suite, so to speak?

A That is correct; yes, sir.

Q Not the office where the Governor actually sits?

A No, I was never in that office.

Q It is not even the office where the secretary actually works, is it?

A I wouldn't know.

Q Isn't it the reception room?

A Apparently so; yes, sir.

Q Now, I believe you said that when you talked with someone there that you identified yourself as a U. S. Marshal?

A Deputy U. S. Marshal.

Q Deputy U. S. Marshal; did you exhibit any identification?

A I did, sir.

Q To this person?

A I did.

Q What did that consist of?

A My identification.

Q Did he look at it?

A He did.

Q All right. Now, the next thing you did was to say that you had a process to serve on the Governor; is that correct, sir?

A I -- I asked him if I could see the Governor, that I was there on official business, and that I did have a summons and complaint out of the U. S. District Court.

Q I thought you said -- and I may be in error --

A And a process.

Q -- did you say the word, "Process," --

A Yes, sir; and or the process.

Q -- at any time? Now, I want you to think before you answer this question; I will ask it carefully and slowly. At any time while you were in the Capitol, or while you were at the Governor's Mansion to serve this process that you just have mentioned, did you further identify as to what that process was or what it consisted of, other than a summons and complaint?

A Yes, I did.

Q To whom?

A You -- when I first met Mr. -- the Trooper, Dothan, I believe his name is, I am not sure of it, he was the first gentleman that

I met on the steps, he asked me to identify myself there, and if I was a Federal Marshal. I said -- I told him I was and my business there was a summons and complaint, that I had also various other exhibits in the complaint, and I had a process from the Southern District of Alabama which was sent up here.

Q Now, is that all you said with reference to this process, sir?

A To Dothan; yes, sir.

Q To anybody at the Capitol?

A I asked Mr. Chandler, the Capitol Police there, if I could see the Executive Secretary, and I mentioned the same to him, in essence the same thing.

Q To get back specifically to my question, did you on any occasion while at the Mansion or the Capitol further identify this process other than that you have already just testified to?

A I don't believe so.

Q Then isn't it a reasonable conclusion that no one connected with the Governor or the Governor knew as a matter of fact what you had in your hand?

A They didn't want to know; they kept ignoring me.

Q Now, you are using your imagination, now, aren't you; can you read a man's mind?

A No, sir.

Q Why do you make a statement, "They didn't want to know"?

A Well, when I opened the -- knocked on the Governor's outer door, the glass door, and I had the papers in my hand and my I.D. card,

I asked the Trooper then would he please let me talk to someone there of authority, he said, "He is not in," and closed the door.

Q Let's get back to my question. I would appreciate if you would -- don't give any interpretation of a person's mind, I don't think that is responsive to the question.

A Yes, sir.

Q I will reiterate the question again; while you were at the Governor's Mansion or while you were at the Capitol, did you further identify this process other than the way you have already testified about --

A No, sir.

Q -- as of now? Sir?

A No, sir.

Q Now, when you last approached or came within the Capitol Building on the night of the 9th, what time of day was it, or night?

A When I last approached it?

Q Yes, sir?

A You mean when the --

Q When you were asked to leave, what time was that?

A It was I imagine after midnight.

Q After midnight?

A It had to be.

Q Now, isn't it factual that there were numerous people, fifty or sixty or seventy-five people, on the Capitol grounds at the

time you left the Capitol Building that night?

A I imagine so.

Q Well, you imagine so; you can see, can't you?

A Well, I don't know whether it was fifty or --

Q Did you observe any?

A I observed a lot of newspaper photographers and reporters and the National Guard and the Highway Patrol.

Q Did you observe anyone else in civilian clothes?

A Well, the newspaper men were in civilian clothes; other than that, I don't know.

Q How many newspaper men were there?

A Oh, I imagine twenty-five to thirty.

Q Did you see anybody beside those twenty-five or thirty people and the National Guardsmen?

A About three people on the front steps of the Capitol when I went around there.

Q What about the Capitol lawn?

A I didn't see anybody there.

Q Did you see cars parked and lights on in front of the Capitol down on what is known as Bainbridge Street and Dexter Avenue?

A On the street, lights were on down there; yes, sir.

Q Weren't there cars coming in and out of there all the time, gathering there?

A No, not gathering; no, sir.

Q Well, were they passing?

A Well, normal traffic.

Q Normal traffic?

A (Nodded to indicate affirmative reply)

Q What do you term normal traffic at twelve o'clock at night in front of the Capitol?

A Passing automobiles; it wasn't heavy traffic.

Q Well, how many; five, ten, fifteen?

A Well, I wouldn't know how many passed the time I was there.

Q Well, you said, "Normal"; that is your statement?

A Apparently normal to me.

Q Well, explain what you mean by "Normal"? You ever been at the Capitol before at twelve o'clock at night?

A No, I haven't.

Q Then you are not qualified to know what is normal there, are you, sir?

A Presumably not; no, sir.

Q Now, I believe you testified that a colonel, and I am emphasizing this word, because it was your word, if I can hear correctly asked -- asked you to leave?

A Yes, sir.

Q You were not ordered to leave?

A That's right.

MR. KOHN: Thank you, sir.

JUDGE JOHNSON: Redirect.

MR. DOAR: No, sir.

JUDGE JOHNSON: Call your next witness.

MR. DOAR: General Harrison.

MARSHAL: Harrison?

MR. DOAR: General Harrison.

MARSHAL: Have a seat there.

ALFRED C. HARRISON, witness for the United States, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. DOAR:

Q Would you tell the Court your full name, please?

A Alfred C. Harrison.

Q Where do you live, General Harrison?

A Walter Bragg Smith Apartments in Montgomery.

Q Could you speak up just a little louder?

A Walter Bragg Smith Apartments in Montgomery.

Q What is your occupation?

A The Adjutant General of Alabama.

Q And as Adjutant General, what is your rank?

A Major General.

Q How long have you been Adjutant General of the State of Alabama?

A Since 15 January, '63.

Q What are the responsibilities of the Adjutant General of the State of Alabama?

A Under the Governor's direction he is charged with the direction